
(2010) 08 RAJ CK 0063
In the Rajasthan High Court

Mahendra Singh and Others	Vs	APPELLANT
State of Raj. and Others		RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311

Citation : (2010) 4 RLW 3197

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—Heard learned Counsel for the parties.

2. The petitioners who were appointed under contract of service for a fixed term as General Nurse Grade-II and Lab Technicians with the respondent No. 4, Dr. S.N. Medical College and Joint Group of Hospital, Jodhpur, have approached this Court by way of present writ petitions, which are disposed of by a common order" however, the facts of S.B. Civil Writ Petition No. 5753/2010 Mahendra Singh and Ors. v. State of Rajasthan and Ors. are taken as leading case.

3. The petitioners have approached this Court seeking a relief against their termination of contract of service after 30.06.2010. Learned Counsel for the petitioners submitted that though the petitioners" appointment was made under a contract for a specific period, which was initially to expire on 31.03.2010, but was later on extended up to 31.05.2010, however, the petitioners are entitled to continue in the service as General Nurse Male/Lab Technicians because the substantive vacancies for these positions are still existing and are admittedly available with the respondent No. 4, and against such substantive vacancies till regularly selected persons are made available and appointed, the petitioners" contract of service deserve to be extended.

4. Learned Counsel for the petitioners drew attention of the Court towards letter No. 6187 (Annex-5) dated 30.04.2010 written by the respondent No. 4, the

Principal and Controller of the said Dr. S.N. Medical College and Joint Group of Hospital, Jodhpur to the Principal Secretary of Government of Rajasthan to the effect that there are 21 vacant posts of Lab Technicians and 20 vacant posts of Nurse Grade-II as sanctioned vide letter dated 19.08.2009 of the State Government, and further 60 posts of Nurse Grade-II, 20 for Trauma Centre, 20 for Cardiotheresic Surgery and 20 for Cardiology department of the respondent No. 4. The respondent No. 4, Principal and Controller in the said communication dated 30.04.2010 addressed to Principal Secretary, Medical and Health Department of Government of Rajasthan also recommended that till the regularly selected candidates for these positions are made available by the RPSC, the present petitioners who were contracted engagee(s) for the said positions to be continued in service. Learned Counsel for the petitioners pointed out that even in the additional affidavit filed by the respondent No. 4 today in SBCWP No. 5715/2010 Bhuraram and Ors. v. State and Ors. through one Dr. Mota Ram Choudhary, again it has been admitted in para 4 of the said affidavit that 21 vacant posts for Lab Technicians are still available. For the other 60 posts of Male Nurse Grade II, which was sanctioned by letter dated 19.08.2009 of the State Government, referred in the aforesaid letter Annex-5 dated 30.04.2010, learned Counsel for the petitioners submitted that there are thus sufficient substantive vacancies available to accommodate the present petitioners so long as the regularly selected candidates are made available by the State Government. Learned Counsel for the petitioners fairly submitted that as soon as the regularly selected candidates are made available, the petitioners' right under the contract cannot continue and they cannot supersede such right of appointment of the regularly selected candidates. The present petitioners who are contractual engagee(s) are, of course entitled to participate in the selection process for such regular recruitment to be undertaken by the respondent- State for filling up these posts.

5. Learned Counsel for the petitioners further urged that in view of the substantive vacancies being available, if contract of the present petitioners is not extended, they will not only be deprived of their employment, snatching their source of livelihood but also on the other hand the interests of the State would also suffer in these group of hospitals at Jodhpur, in view of the large number of the vacant posts of Lab Technicians and General Male Nurse Grade II. They relied upon the decision rendered by Hon"ble the Supreme Court in the case of Commissioner, Kendriya Vidyalaya Sangathan and Ors. v. Anil Kumar Singh and Ors., (2003) 10 SCC 284 and judgment of learned Single Judge of this Court in the case of Ms. Savita Samriya and 31 Ors. v. State and Ors. reported in 2009 (4) WLC (Raj.) 574.

6. On the other hand, Mr. Yash Pal Khileree, learned Dy. Govt. Counsel vehemently submitted that the petitioners have no right to continue after the lapse of period of their contract of service and they have no legal right to continue in service even though the vacancies for these positions may be available for which the State may undertake the regular selection process. He

informed the Court that for the posts of General Nurse Male Grade II such process has already been started by the State Government, and as soon as the regularly selected candidates become available, they will be so appointed to fill up these posts. Relying upon a decision of this Court rendered in the case of Vishnu Kumar v. M.L.S. University and Anr., reported in 2002 WLC (Raj.) UC 316, and judgment delivered by the Division Bench of this Court in D.B. Civil Special Appeal (W) No. 237/2010 Subhash Bishnoi v. State of Raj. and Ors. decided on 03.05.2010), learned Counsel for the respondents submitted that present writ petitions deserve to be dismissed, as after 31.05.2010, the petitioners have no legal right to continue in the said service as contractual engagee(s).

7. In the rejoinder, learned Counsel for the petitioners further drew the attention of the Court towards a letter dated 12.07.2010 (Annex-9) filed with rejoinder that even after the expiry of contract period on 31.05.2010, the petitioners in the said writ petitions were continued in said service for month of June 2010, and were also paid the fixed monthly honorarium for such discharge of duties and thereafter they are continuing to discharge their duties under the interim orders of this Court. Therefore, it is wrong to contend on the part of the respondents that the contract of service in fact stood terminated on 31.05.2010. To this argument, learned Counsel for the respondents Mr. Y.P. Khileree submitted that under the expectation of receipt of financial sanction for extension of period of contract for these petitioners, the present petitioners might have been allowed to work in the hospital vide letter dated 12.07.2010 (Annex-9) of Superintendent, M.D.M. Hospital, Jodhpur but that does not amount to extending the period of contract of service of the petitioners and in law their right to continue in service did not exist after 30.06.2010. He further submitted that no financial sanction for extending their contract of service has been received even by now and they have made this position clear in the aforesaid additional affidavit of Dr. Mota Ram Choudhary today before this Court. He, therefore, prayed for dismissal of the writ petitions.

8. I have heard learned Counsels for the parties and given my anxious consideration to the rival submissions made at the bar and judgments relied upon by both the sides.

9. The Hon''ble Supreme Court in Commissioner, Kendriya Vidyalaya Sangathan (supra) while dealing with the cases of contractual appointment of teachers, upheld the judgment of High Court by a short order observing as follows, and it would be fruitful to reproduce the relevant portion from the judgment itself:

1. The employer Commissioner, Kendriya Vidyalaya Sangathan is in appeal against the judgment of the Madhya Pradesh High Court in Writ Petition No. 782 of 1995 which was upheld in appeal by the Division Bench. The respondents had been appointed on contractual basis and just before the expiry of the contractual period, they approached the High Court with the prayer that their services should not be terminated until the posts are filled up by a process of regular recruitment. The learned Single Judge by his order dated 6.4.1995 disposed of

the writ petition following an earlier judgment of the said Court in S.P. Upadhyay case directing the writ petitioners should be allowed to continue till the posts are filled up by process of regular recruitment, and those petitioners should be allowed to compete with other candidates if they apply for selection and if they are otherwise not disqualified. The High Court also took additional advantage by virtue of their experience by working for the contractual period. In the aforesaid premises, we do not find any infirmity with the said judgment of the High Court to be interfered with by this Court. The expression "if they are otherwise not disqualified" would obviously mean they must have the necessary qualifications, as required, under the relevant rules for being appointed as a teacher and then they have to compete along with others for adjudication of their merit for being appointed. The apprehension of the employer that the impugned judgment directs condonation of the age is wholly unfounded.

2. In the aforesaid premises, we do not find any justification for interference with the direction given by the High Court, Civil appeal are accordingly dismissed.

3. Since the appeals stand disposed of, the results of the selection already made may be published.

(Emphasis supplied)

10. In the case of Savita Samaria (supra), the Coordinate Bench of this Court in its judgment dated 22.05.2009 similarly dealing with contractual appointments of "Shikshak Adhyovriti" disposed of a batch of writ petition while observing as under:

In the result, all the aforesaid writ petitions are disposed of in the following manner-

(i) Point No. 5 of the undertaking about not availing of legal remedy for continuation of appointment; furnishing of the same on free will and without there being any undue pressure and in full consciousness without there being any influence of intoxication is declared illegal being violative of Articles 14 and 16 of the Constitution of India.

(ii) The termination of the petitioners contract during the continuance of the vacancies is held arbitrary and illegal;

(iii) The respondents are restrained from appointing substitute College Lecturers for the session 2009-2010 against the vacancies on which the petitioners were appointed.

(iv) As regards, continuation of the services of the petitioners after re-opening of the Colleges from 1.7.2009, the respondents are directed to consider the claim of the respective petitioners on priority basis for the session 2009-2010 and pass appropriate orders.

(v) The petitioners shall not be entitled to the fixed amount as referred in the appointment letter for the period of closure of the respective colleges for summer

vacations and further, they are entitled to the fixed amount from the date of their joining as per the order of continuation/fresh appointment in case it is given in the next academic session 2009-2010 in the light of the observations made hereinabove.

(Emphasis supplied)

11. On the other hand, learned Single Judge of this Court in the case of Vishnu Kumar (*supra*) rejected such claim of the adhoc employees of the respondent-M.L.S. University, who claimed their regularization in service against the substantive vacancies available with respondent- University by observing as follows:

4. It is contended by Mr. G.K. Vyas that there were still vacancies for temporary appointment against which he could have been continued on ad hoc basis. The learned Counsel placed reliance on the decision of the Apex Court in *State of Haryana and Ors. v. Piara Singh and Ors.* reported in 1992 (4) SCC 153, wherein it has been laid down that an adhoc or temporary employee can be replaced by only regularly selected employees. In the said case, it was directed to the Government to formulate a scheme for regularization of the services of the temporary Lecturers, who rendered 3 years service with breaks by subjecting them to suitability through the medium of screening committee.

5. I have read the judgment carefully. The said case is not applicable to the facts of the present case as in that case rules for recruitment were under consideration of the State Government and till the finalization of the rules, regular selections were not possible and as such it was asserted that short term appointments were required to be made in order to meet the dire necessity of the teachers. In the instant case, the rules already exist. There is no such difficulty as existed in the Haryana case referred to above. That apart, there is no rules for such sort of regularisation. In *Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava*, the Apex Court held that in appointment made on adhoc basis for a specified period comes to an end by efflux of time, the employee has no right to continue on the post and claim regularisation in service in absence of any rule providing for regularisation after the specified period of service.

6. In view of aforesaid settled legal position of law, the petitioner has no right to claim appointment on the post of Lecturer on adhoc basis particularly when he has appeared before the Selection Committee and has not been found fit.

(Emphasis supplied)

12. The other judgment relied upon by the learned Counsel for the respondent by the Division Bench of this Court in the case of Subhash Bishnoi (*supra*), decided on 03.05.2010, the Division Bench while upholding the judgment of learned Single Judge has observed as under:

7. When even according to appellant and so also from the appointment order, it is clear that his appointment was for a fixed period i.e., up to 28.2.2010, and the

stipulated period having expired, the appointment has come to an end by efflux of time on 28.2.2010.

8. In our opinion, therefore, this Court can not in such cases to hold any kind of judicial inquiry. It is for the reasons that firstly the appointment was not against any substantive post so as to attract the rigor of Article 311 of the Constitution of India and secondly, it was governed by any Service Rules which are applicable to the state employees.

9. Learned Counsel for the appellant was also not able to point out as to how his case falls under any of the two grounds taken note of supra by us so as to entitle him to claim the protection of either Service Rules or umbrella Article 311 of the Constitution. The reason behind it was obvious - namely the appointment itself was contractual in nature and hence, the protection available to a state employee was not available to him.

10. To conclude, there is no substance in the appeal. It is accordingly dismissed in limine.

(Emphasis supplied)

13. In the light of aforesaid decisions, the legal position seems to be settled that contractual appointees under a contract of service for a fixed period have no legal right to either continuation under such contract after efflux of time of the contract itself nor they can possibly claim regularisation in the service on the basis of their experience of such service under such fixed term contract and, therefore, no such legal right is vested in them to continue in service or claim extension of period of contract of service after expiry of such period. But the question which looms large for consideration by this Court in the present case is as to whether such persons though employed on a fixed term contract by the respondent- State who alone could choose the method and manner of their employment deserves to be thrown out of the employment, in the light of admitted availability of large number of substantive vacancies with the respondent- State, at least till the point of them, when regularly selected candidates for such positions become available and are recruited by respondent- State to man these positions.

14. From the facts obtaining in the present case, it appears to this Court that a large number of vacancies of General Nurse Male Grade II and Lab Technicians are available with the respondent No. 4, Dr. S.N. Medical College and Joint Hospital, Jodhpur, 21 vacancies for Lab Technicians and about 60 vacancies of General Nurse Male Grade-II. Learned Counsel for the respondent- State also admitted before this Court that for these posts, the selection process for General Nurse Male Grade II has already been initiated by the State Government and it may take 5-6 months for making such regularly selected candidates available. The Principal and Controller of the said College vide his letter dated 30.04.2010 Annex-5 has already recommended to the Principal Secretary of Medical and Health Department of the Government of Rajasthan that the present petitioners,

Lab Technicians as well as General Nurse Male Grade II deserve to be continued in such services till the regularly selected candidates are made available. The said respondent No. 4 is obviously waiting only for the financial sanction for continuing the contract of service of the present petitioners for this interregnum period till the regularly selected candidates are made available. The Principal Secretary of the said department obviously has not responded to the said letter dated 30.04.2010 either way.

15. Since sufficient time after the communication dated 30.04.2010 has already lapsed and it was expected of the respondent-State through its Principal Secretary to either convey the financial sanction or to negate the same. While on the other hand, under the expectation of receiving such financial sanction, the respondent No. 4 continued to employ these petitioners for the month of June 2010, as would be evident from Annex-9 letter dated 12.07.2010; there is no material before this Court either denying the financial sanction or reasons for such denial. On the other hand, this Court intends to infer from number for substantive vacancies apparently being available with the State Government that State Government has sufficient financial backing and sanction for the same.

16. Obviously, there is some force in the contention of the learned Counsels for the petitioners that if the period of contract of service of the present petitioners is not extended, the work in these group of Hospital at Jodhpur is bound to suffer; and admittedly the vacancies would lie vacant till regularly selected candidates are made available and are appointed, the work of providing of medical relief and service to the patients in these group of hospitals is bound to suffer. This Court is also conscious of such "Vacancy Syndrome" in all Government Institutions and public bodies where, for the reasons best known to the persons responsible for filling up of those vacancies for long duration causes incalculable loss to such institutions and public bodies. In fact, there is an urgent and dire need to appreciate and remove such "vacancy syndrome" on the part of the State Government to provide a balanced and regular employment to the youth of the country, and in the light of such vacancies being available, the practice of making adhoc and fixed term contractual appointment and sudden jettisoning of these low paid employees from respective jobs merely on account of non-availability of requisite financial sanction can hardly be appreciated by this Court. As already stated while it is for the State Government to decide the manner and method of recruitment and employment for various positions including like Lab Technicians and General Nurse Male Grade II in the present case for which the petitioners and their likes have hardly any role to play, despite the legal position that such fixed term contract employees do not have any right to claim to continue in the job after expiry of period of contract or to claim regularisation, this Court finds itself unable to countenance the stand of the respondent- State that in absence of any such legal right of the petitioners their writ petitions deserve dismissal simpliciter leaving aside the large number of available vacancies and despite the recommendations of the Principal and Controller of Group of Hospitals, recommending the extension period of contract

of the present petitioners on one side.

17. The claim of the present petitioners is only to the extent that they may be allowed to continue in the said positions till such regularly selected candidates are available and so appointed by the State Government and this contention cannot be said to be absolutely without merit. This claim of the petitioners is also found to be supported by the aforesaid decision of the Hon"ble Supreme Court in the case of Commissioner, Kendriya Vidyalaya Sangathan (supra), and, therefore, this Court is inclined to dispose of these writ petitions with the direction to respondent- State and particularly respondent No. 4 to continue to the petitioners (Lab Technicians as well as General Nurse Male Gr. II) in the service and their period of contract may be extended till the regularly selected candidates are made available by the RPSC and the State Government and such regularly selected candidates are appointed to fill up these vacancies. It is needless to add that the present petitioners are also equally free to participate in the regular selection process, which has been initiated by the respondent- State as far as General Nurse Male Gr. II is concerned; or may be initiated for the remaining positions of Lab Technicians. However, the continuation of the present petitioners in these positions against the admitted availability of substantive vacancies with the respondent No. 4 is only up to the period till such regularly selected candidates are made available and are appointed to fill up these vacancies.

18. Accordingly, these writ petitions are allowed with aforesaid observations. No order as to costs.